

**THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 62/ALD/2021

**Under Section 9 of Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

M/S BALAJI ENTERPRISES

Through its Sole Proprietor

Mr. Rajesh Kumar S/O Sh. Karan Singh

Agrasen Nagar, Mavassal Petch, Kosi Kalan

Mathura, Uttar Pradesh

Email: Rajeshkosi1947@gmail.com

Mobile: 9098073000

...Petitioner-Operational Creditor

Vs.

M/S CS INFRA CONSTRUCTION LIMITED

CIN NO: U45400UP2009PLC038635

Village and Post Khanwar, Ballia

Uttar Pradesh

Pin code: 277001

Email: contactus@csil.info

Mobile: 99187000901

...Respondent-Corporate Debtor

Judgement delivered on : 31.10.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Sh. Rohit Verma alongwith Sh. Gaurav Rana,
Advs.

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide order dated 20.09.2022

—Sd—

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

1. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC**' / '**Code**'), by M/S Balaji Enterprises (for brevity '**Operational Creditor**'/ '**Applicant**'), represented by its Authorised Representative, Mr. Rajesh Kumar, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/S CS Infra Construction Limited (for brevity '**Corporate Debtor**'/ '**Respondent**').
2. The Corporate Debtor, namely, M/S CS Infra Construction Limited, is a Company incorporated on 10.11.2009 under the provisions of Companies Act, 1956 with CIN No. U45400UP2009PLC038635 with its registered office at Village and Post Khanwar, Ballia Uttar Pradesh-277001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-2.
3. The facts of the case, briefly, as stated in the petition are that Corporate Debtor required supply of Light Diesel Oil (LDO) for use in its Hot Mix plants (HMPs) located at various locations in the State of U.P. The Operational Creditor has sold, supplied and delivered Goods to the Corporate Debtor and accordingly raised invoices upon Corporate Debtor. Copy of outstanding invoices, ledger Account and computation of default are attached with the petition as Annexure-4, 5 & 6 respectively.

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4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.1,79,84,715/- (Rupees One Crore Seventy-Nine Lakhs Eighty-Four Thousand Seven Hundred and Fifteen Only) (comprising of outstanding principal sum of Rs.1,69,35,089/- and interest of Rs. 10,49,626/- upto 28th May 2017) together with further interest at the rate of 12% per annum from 29th May, 2017 on principal sum of Rs.1,69,35,089/- till realization by Operational Creditor and the date on which default occurred is 28.05.2017.
5. A demand notice in Form 3 dated 14.12.2020 is stated to be issued to the Corporate Debtor and the same has been duly served. Copy of notice is appended with this application as Annexure-1. However, reply to the demand notice has been stated to be received on 02.01.2021 whereby they alleged that there are pre-existing disputes between operational creditor and corporate debtor.
6. Notice of this petition was issued to the corporate debtor vide order dated 05.10.2021 to show cause as to why this petition be not admitted. Counsel appearing on behalf of the corporate-debtor sought some time to file necessary authorization and to file necessary affidavit in the matter. Reply was filed, however, after a few hearings, there was no representation from the respondent-corporate debtor. Therefore, respondent-corporate debtor has been set ex-parte on 20.09.2022. The short written submissions are also filed by Operational Creditor vide Diary No. 0902109005092021/8 dated 09.09.2022.
7. We have heard the learned counsel for the petitioner and have perused the records.

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8. The first issue for consideration is whether the demand notice in Form 3 dated 14.12.2020 was properly served. The petitioner has placed a copy of the notice which was delivered to the corporate debtor.
9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that after a few hearings, none appeared on behalf of the corporate debtor despite being informed of the same and has been set ex parte vide order dated 20.09.2022. It is deposed by way of affidavit by Operational Creditor that reply dated 02.01.2021 was received to its Demand Notice where Corporate Debtor has raised baseless, frivolous, sham and bogus dispute. Also, it is stated that no notice was given by the Corporate Debtor relating to a dispute of the unpaid operational debt. It shows that there is no pre-existing dispute.
10. The other issue for consideration is whether this application is filed within limitation. This application was filed on 11.06.2021 vide Diary No. 0902109005092021. The date on which default occurred is 28.05.2017. Despite the lapse of limitation period(three years), this petition still falls within limitation by an order of the Hon'ble Supreme Court namely, ***Re: Cognizance for Extension of Limitation***¹ [**Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 dated January 10, 2022**] wherein the Court directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial

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¹ [2022 SCC Online SC 27](#), order dated 10.01.2022 in *Re: Cognizance for Extension of Limitation*, Suo Motu Writ (Civil) No. 3 of 2020

or quasi-judicial proceedings. Para III and IV of the order are produced hereunder for further clarity on the subject :-

“III. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of 1,79,84,715 (including interest). The operational creditor has sold, supplied and delivered goods to the corporate debtor and invoices are attached as Annexure-4. The corporate debtor sent reply to the demand notice dated 02.01.2020 and has admitted a default of Rs.1,12,96,990(One Crore Twelve Lakh Ninety Thousand and Nine Hundred and Ninety only) and the same was placed on record by operational creditor by filing

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affidavit as Annexure 1 of this affidavit vide filing no. 0902109005092021 on 06.05.2022. Accordingly, the petitioner proved the debt and the default, which is more than Rupees One Crore by the respondent-corporate debtor.

12. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed and unrebutted as respondent/corporate debtor chose not to contest the petition. Accordingly, the petitioner proved the debt and the default which is above the threshold limit.

13. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s CS Infra Construction Limited and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below:

- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
14. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
15. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
16. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Pawan Lohia and there is nothing adverse against him. In view of the above, we appoint Mr. Pawan Lohia, Registration No. IBBI/IPA-001/IP-P-02021/2020-

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2021/13160, E-mail pawanlohea@gmail.com as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Pawan Lohia shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent within 7 days of the order.
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

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iv.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound manner. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate

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Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound manner. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational

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position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

18. This petition is admitted accordingly.

19. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

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(Subrata Kumar Dash)
Member (Technical)

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(Harnam Singh Thakur)
Member (Judicial)